



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEDI-PLUS PHARMACY
PO BOX 546
BARKER TX 77413-0546

Respondent Name

INSURANCE CO OF THE STATE OF PA

Carrier's Austin Representative Box

Box Number: 19

MFDR Tracking Number

M4-12-1938-01

MFDR Date Received

FEBRUARY 7, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Reduction of claims due to (CAC-W10) 'No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.' – CMI has determined that there is no maximum allowable reimbursement (MAR) for prescription medication and that it can pay a fair and reasonable amount based on its estimation of what is Usual and Customary in the market. **CMI has not provided any documentation to date to show how it determined Usual and Customary or what its reported 'research' showed, much less how it determined fair and reasonable. Division Rule 134.503 provides that the MAR is the lesser of the provider's usual and customary charge or the amount determined by a formula provided in 134.503(a)(2).** (517) 'Paid at est. U&C based on research, labor code sec. 413.043 and 2002 PFG, 29 Tex-Admin Code 132.503' – The pharmacy's U&C charge is the amount it normally charges the walk-in customers that have no insurance or are covered by private health insurance. Most pharmacies participate in networks in which compensation is governed by contract for transactions subject to such contracts. We do not belong to any PBM or are not contracted with any private insurance. Medi-Plus Pharmacy has set out to function under a unique situation that is not considered under CMI so called study of the norm U&C fee for pharmacies...**Medi-Plus pharmacy on the other hand has no merchandise to profit from but gives specific service related to workers' comp. patient.**"

Amount in Dispute: \$1,004.01

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Please note reimbursement was previously made utilizing a nationally recognized pharmaceutical reimbursement system (Redbook), which is in accordance with TDI Rule 134.503. No additional reimbursement is recommended at this time."

Response Submitted by: Hoffman Kelley, 5316 Hwy. 290 West, Ste. 360, Austin, TX

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
May 9, 2011	HYDROCOD/APAP 10/650 TAB	\$124.73	\$124.70
May 9, 2011	PANTOPRAZOLE SOD DR 50MG TAB	\$131.02	\$0.00
June 6, 2011	HYDROCOD/APAP 10/650 TAB	\$124.73	\$124.70
July 3, 2011	HYDROCOD/APAP 10/650 TAB	\$124.73	\$124.70
July 30, 2011	HYDROCOD/APAP 10/650 TAB	\$124.70	\$124.70
August 26, 2011	HYDROCOD/APAP 10/650 TAB	\$124.70	\$124.70
September 22, 2011	HYDROCOD/APAP 10/650 TAB	\$124.70	\$124.70
October 19, 2011	HYDROCOD/APAP 10/650 TAB	\$124.70	\$124.70

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

- 28 Texas Administrative Code §133.307, effective May 25, 2008, 33 Texas Register 3954, sets out the procedures for resolving a medical fee dispute.
- 28 Texas Administrative Code §134.503, emergency rule effective from January 1, 2011 and expired on June 29, 2011, 35 Texas Register 11775, sets out the reimbursement for pharmaceutical services.
- 28 Texas Administrative Code §134.503, amended to be effective March 14, 2004, 29 TexReg 2346, sets out the reimbursement for pharmaceutical services.
- The services in dispute were reduced/denied by the respondent with the following reason codes:
 - 3 – Charge for pharmaceuticals exceed the fees established by the fee schedule/UCR rates.
 - W1 – Workers Compensation State Fee Schedule adjustment.
 - 193 – Original payment decision is being maintained. This claim was processed properly the first time.
 - 5375 – The attached billing has been re-evaluated at the request of the provider. Based on this re-evaluation, we find our original review to be correct. Therefore, no additional allowance appears to be warranted.

Issues

- How is reimbursement established for the service(s) in dispute?
- What does §134.503(c)(3)(A) require?
- Did the requestor support its request for additional reimbursement?

Findings

- Reimbursement for the dates of service, May 9, 2011 and June 6, 2011, in dispute may be established by applying the emergency rule 28 Texas Administrative Code §134.503, effective from January 1, 2011 through June 29, 2011, 35 Texas Register 11775. Paragraph (c) of the emergency rule states:

The reimbursement for prescription drugs shall be as follows:

- (1) A negotiated or contract amount between the insurance carrier and the pharmacy, or the pharmacy processing agent, if applicable, that is greater than the reimbursement established by paragraph (3)(A) of this subsection may be paid for prescription drugs used for an injured

employee's claim at any time when it is necessary to secure health care for an injured employee;

- (2) A negotiated or contracted amount between the insurance carrier and the pharmacy, or the pharmacy processing agent, if applicable, that is less than the reimbursement established by paragraph (3)(A) of this subsection; or
- (3) In the event a negotiated or contract amount between the insurance carrier and the pharmacy, or the pharmacy processing agent does not exist, the lesser of:
 - (A) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed;
 - (i) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee = MAR;
 - (ii) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee = MAR;
 - (iii) When compounding a single compounding fee of of \$15 per prescription shall be added to the calculated total for either subparagraph (A)(i) or (ii) of this paragraph;
or
 - (B) The provider's billed amount.

No documentation was found to support the existence of a contract. Reimbursement is the lesser of the fee established by the applicable AWP formula, or the provider's billed amount pursuant to 28 Texas Administrative Code Rule §134.503(c)(3).

Reimbursement for the dates of service, July 3, 2001 through October 19, 2011, in dispute may be established by applying the rule 28 Texas Administrative Code §134.503, amended to be effective March 14, 2004, 20 TexReg 2346. Paragraph (c) of the rule states:

The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection;

2. 28 Texas Administrative Code §134.503(c)(3)(A) states, in pertinent part, that "the fee established by the following formulas [is] based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication pharmaceutical pricing data in effect on the day the prescription drug is dispensed." This rule applies to dates of service May 9, 2011 and June 6, 2011. The preamble to §134.503, adopted to be effective January 3, 2002, 26 Texas Register 10970, provides guidance on the latter requirement.

COMMENT: Commenter contended that the nationally recognized pharmaceutical data is too broad. Some pharmacists use the daily AWP updates provided by First Data, some use weekly, and some use the monthly publication. Commenters recommend that the Commission specify a specific pharmaceutical reimbursement system that insurers must use to determine the AWP of drugs. Since pricing can differ daily, this will result in uniformity of reimbursed amounts and should prevent many medical disputes. Some commenters recommend that the Commission adopt by reference First Data Bank's monthly "Price Alert" as modified for the Medicare system, as the reimbursement system publication to be used by insurers and bill review agents since it has recently been adjusted to reflect accurate and lower AWP's.

RESPONSE: The Commission disagrees with the suggestion to select one source for AWP. The Commission wishes to allow flexibility for whichever nationally recognized pharmaceutical reimbursement system the carrier selects and will monitor to determine if future changes are warranted.

COMMENT: Commenters requested clarification regarding whether AWP should be updated weekly or daily. Commenter recommends updating daily.

RESPONSE: The Commission agrees with daily updating, but disagrees that clarification is necessary. Section 134.503(a)(2) states that reimbursement is based on the average wholesale price in effect on the day the prescription drug is dispensed.

The January 3, 2002 adoption preamble establishes that the Division expects AWP prices to be updated daily. Because the requestor has the burden of proof in this medical fee dispute, it must provide evidence to support that any asserted AWP values used to calculate reimbursement pursuant to §134.503(c) were in effect on the day the disputed drug was dispensed. A mere assertion of the rate in effect on the day that the drug is dispensed is not sufficient.

3. The pharmaceuticals in dispute were dispensed on May 9, 2011 through October 19, 2011. After thorough review of the information and documentation provided by the parties, the Division finds:
 - The respondent alleged that it used Redbook as its basis for the payments issued for all dates of service and pharmaceuticals. The respondent did not provide sufficient evidence to support the asserted AWP price or effective date.
 - In order to refute the carrier’s payment in this medical fee dispute, the requestor alleged that a First Data Bank AWP pricing of 3.928 per unit for PANTOPRAZOLE SOD DR 40MG TAB, 30 count, NDC number 00008060701 should be used as a basis for additional reimbursement. The requestor further alleged that “The AWP used to calculate the Bill Amount is valid for the Date of Service in question.” The requestor provided sufficient evidence to support the asserted First Data Bank AWP price and effective date.
 - In order to refute the carrier’s payment in this medical fee dispute, the requestor alleged that a First Data Bank AWP Pricing of 0.90933 per unit for HYDROCOD/APAP 10/650 TAB, 120 count, NDC number 00591050305 should be used as a basis for additional reimbursement. The requestor further alleged that “The AWP used to calculate the Bill Amount is valid for the Date of Service in question.” The requestor provided sufficient evidence to support the asserted First Data Bank AWP price and effective date.

Dates of Service	Prescription Drug	§134.503 (c) (3)	Carrier Paid	Due
May 9, 2011	HYDROCOD/APAP 00591050305	$((0.90916 \times 120) \times 1.25) + \$4 = \$140.37$	\$15.67	\$124.70
May 9, 2011	PANTOPRAZOLE 00008060701	$((0.43400 \times 30) \times 1.25) + \$4 = \$20.28$	\$20.28	\$ 0.00
June 6, 2011	HYDROCOD/APAP 00591050305	$((0.90916 \times 120) \times 1.25) + \$4 = \$140.37$	\$15.67	\$124.70
				\$249.40

Dates of Service	Prescription Drug	§134.503 (c) (1)	Carrier Paid	Due
July 3, 2011	HYDROCOD/APAP 00591050305	$((0.90916 \times 120) \times 1.25) + \$4 = \$140.37$	\$15.67	\$124.70
July 30, 2011	HYDROCOD/APAP 00591050305	$((0.90916 \times 120) \times 1.25) + \$4 = \$140.37$	\$15.67	\$124.70
August 26, 2011	HYDROCOD/APAP 00591050305	$((0.90916 \times 120) \times 1.25) + \$4 = \$140.37$	\$15.67	\$124.70
September 22, 2011	HYDROCOD/APAP 00591050305	$((0.90916 \times 120) \times 1.25) + \$4 = \$140.37$	\$15.67	\$124.70
October 19, 2011	HYDROCOD/APAP 00591050305	$((0.90916 \times 120) \times 1.25) + \$4 = \$140.37$	\$15.67	\$124.70
				\$623.50

The requestor in this medical fee dispute has the burden to prove that it is due additional reimbursement. No evidence was found to support the requestor’s asserted AWP price, and the effective date. For that reason,

the Division concludes that the requestor has submitted sufficient evidence to support that additional reimbursement is due.

Conclusion

For the reasons stated above, the division finds that the requestor has supported its request for additional reimbursement. As a result, the amount ordered is \$872.90.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$872.90 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

February 13, 2014
Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.